

BEFORE THE DIVISION OF INSURANCE

STATE OF COLORADO

Order No. O- 13-105

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**AMENDED FINAL AGENCY ORDER**

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IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF FIRST  
AMERICAN TITLE INSURANCE COMPANY,

Respondent

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THIS MATTER comes before the Colorado Commissioner of Insurance (“Commissioner”) as a result of a market conduct examination (“MCE”) conducted by the Colorado Division of Insurance (“Division”) of First American Title Insurance Company (“Respondent”), pursuant to §§ 10-1-203, 204, and 205, as well as § 10-3-1106, C.R.S.

The Commissioner fully considered and reviewed the verified MCE Report (“Report”) dated July 8, 2011, the written submissions and rebuttals provided by Respondent in response to the Report, and the recommendations of staff.

The Report covers the examination period of January 1, 2009 through December 31, 2009.

The Commissioner, on August 29, 2012, entered a Final Agency Order (“FAO”). Subsequent to the entry of the FAO, on September 28, 2011, the Respondent filed a Complaint for Judicial Review and Postponement of Agency Action in Denver District Court (“Judicial Review Action”). On October 11, 2012, the Commissioner and the Division answered the Complaint. The Judicial Review Action is currently pending in Denver District Court.

Respondent filed a Notice of Appeal with the Colorado Court of Appeals (the “Appellate Proceedings”). Since the filing of the Complaint, the Appellate Proceedings have been stayed.

The Judicial Review Action and the Appellate Proceedings are hereinafter collectively referred to as the “Litigation.”

The Commissioner, the Division and the Respondent have agreed to resolve disputed issues and the Litigation between them by issuance by the Commissioner of this

Amended Final Agency Order (“Amended FAO”) and by the dismissal of the Litigation by the Parties.

This Amended FAO supercedes and fully replaces the prior FAO.

The Commissioner makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. At all relevant times during the examination, the Respondent was licensed by the Division to conduct business as a title insurer in the State of Colorado.
2. On May 9, 2011, in accordance with §§ 10-1-201, 10-1-203, 10-1-204, and 10-1-205, as well as § 10-3-1106, C.R.S., the Division completed an MCE of the Respondent. The period of examination was January 1, 2009, through December 31, 2009.
3. In conducting the MCE, the examiners observed those guidelines and procedures set forth in the 2010 Market Regulation Handbook adopted by the National Association of Insurance Commissioners.
4. The MCE was completed on May 9, 2011. Pursuant to § 10-1-205(2), C.R.S., the market conduct examiners prepared the Report, which the Examiner-In-Charge timely filed with the Division, under oath, on July 8, 2011. The Report was subsequently timely transmitted to Respondent on July 8, 2011.
5. On July 8, 2011, the Division provided the Respondent with written notification that it was afforded a right to file, within thirty days, written submissions or rebuttals with respect to any matter contained in the Report.
6. Pursuant to § 10-1-205(1), C.R.S., the Report is comprised of only the facts appearing upon the books, records, or other documents of the Respondent, its agents or other persons who were examined concerning Respondent's affairs. The Report contains the conclusions and recommendations that the examiners found reasonably warranted based upon the facts.
7. On August 8, 2011, Respondent timely filed written submissions and rebuttals to the Report as provided for at § 10-1-205(2), C.R.S.
8. The Commissioner fully considered and reviewed the Report, Respondent's August 8, 2011 submissions and rebuttals to the Report, and the recommendations of staff.
9. The MCE proceeded under the substantive terms, authority and procedures set forth at §§ 10-1-203, 204 and 205, C.R.S., as well as § 10-3-1106, C.R.S.

10. This MCE was not conducted as an informal investigation of consumer complaints.
11. This MCE did not proceed and was not conducted as a targeted on-site examination pursuant to § 10-1-212, C.R.S.
12. Except as set out in this Amended Final Agency Order, including the amounts of the civil penalties set out herein, Respondent does not waive its objections previously submitted in response to the MCE, and, further, Respondent does not agree that its challenges to the FAO set forth in the Litigation were in error or without bases and expressly preserves such challenges should there be any need to assert them in any future market conduct examinations or other regulatory actions by the Division or Commissioner.

### **CONCLUSIONS OF LAW AND ORDER**

13. Pursuant to § 10-1-205(3)(a), C.R.S., the Commissioner adopts the Report as modified herein ("Modified Report"). The Commissioner has modified the Report as follows: Issue A5 has been removed from the report. Issue A6 was renumbered to A5. The language under the current Issue A5 has been modified regarding the transaction of title business by unlicensed agents.
14. The Commissioner finds the Respondent was operating in violation of certain Colorado insurance laws and hereby orders the Respondent, if not already implemented, to take necessary and appropriate action, as set forth herein, to cure such violations. In the event Respondent has taken necessary actions to cure violations, Respondent is ordered to provide evidence of said action to the Commissioner within thirty (30) days of the date of execution of this Amended FAO.
15. The Commissioner considered the options available under §10-1-205(3)(b) and (c), C.R.S. After such consideration, the Commissioner did not reject the Report or direct the examiners to reopen the examination for the purposes of obtaining additional data, documentation, or information, or to re-file the Report pursuant to subsection (1) of §10-1-205, C.R.S. The Commissioner finds an investigatory hearing, pursuant to §10-1-205(3)(c), C.R.S., for the purposes of obtaining additional documentation, data, information, and testimony, is not warranted.
16. A copy of the Modified Report is attached to the Amended Final Agency Order and is incorporated herein. The July 8, 2011, Report provided Respondent with the opportunity to show cause as to why it should not be found in violation of the Colorado insurance laws and/or regulations for all issues identified below. Respondent provided its submission and rebuttals on August 8, 2011.

17. The Commissioner hereby orders Respondent, if such violations have not already been cured, to cure the violations set forth below in the time frame and manner set forth below.
18. Issue A1: Failure to provide an anti-fraud statement as required by Colorado insurance law. The examiners found this to be a repeat of prior issue A in the findings of the market conduct examination report for calendar year 2002. The violation resulted in Recommendation #9 of Final Agency Order O-04-183. The 2002 examination report and Final Agency Order O-04-183 are incorporated herein by reference. This failure constituted a violation of § 10-1-128, C.R.S. The Respondent was required to provide written evidence to the Division that it has revised all relevant forms and fully implemented procedures to ensure that all title insurance policies, applications or claim forms include the required verbiage regarding fraudulent acts and penalties, as required by Colorado insurance law § 10-1-128, C.R.S. The Division's records indicate that the Respondent revised its title insurance policies to include the required verbiage regarding fraudulent acts and penalties, which if fully implemented, appears to comply with the corrective actions order concerning this violation.
19. Issue A2: Failure to adopt and implement reasonable standards for claims processing. This failure would constitute a violation of Colorado Insurance Regulation 1-1-7 and § 10-3-1104(1)(h)(III), C.R.S. The Respondent challenged the interpretation of its responsibilities and that there was any violation. The Commissioner is not including a violation of Colorado Insurance Regulation 1-1-7 or § 10-3-1104(1)(h)(III), C.R.S. No later than thirty (30) days from the date of this Final Agency Order, the Respondent shall provide evidence to the Division that it has adopted and implemented reasonable standards to ensure prompt investigation of claims arising under its insurance policies, as required by Colorado insurance law.
20. Issue A3: Failure to require its agents to retain adequate documentation and records in its title underwriting files. The Respondent challenged the interpretation of its responsibilities and that there was any violation. This failure constituted a violation of §§ 10-11-106, 10-11-122, C.R.S., and Colorado Insurance Regulation 3-5-1. No later than thirty (30) days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has exercised reasonable efforts to ensure that its agents retain specific and adequate documentation and records in their title underwriting files, for the required length of time, as required by Colorado insurance law.
21. Issue A4: Failure to provide adequate agent oversight of privacy protection policy. The Respondent challenged the interpretation of its responsibilities and that there was any violation. This failure constituted a violation of Colorado

Insurance Regulations 3-5-1 and 6-4-1. No later than thirty (30) days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has exercised reasonable efforts to ensure that its agents comply with the privacy protection policy disclosure laws and regulations, as required by Colorado insurance law.

22. Issue A5: Failure, in some instances, to ensure producers were duly licensed prior to transacting business on behalf of First American resulting in the transaction of unauthorized insurance, and/or failure to maintain adequate licensing records. The Respondent challenged the interpretation of its responsibilities and that there was any violation. This failure constituted a violation of §§ 10-2-401, 10-2-406, 10-11-116 C.R.S., and Colorado Insurance Regulation 1-1-7. No later than thirty (30) days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has implemented procedures to ensure that it verifies the license status of all producers prior to the transaction of business on behalf of Respondent and that Respondent maintains documentation of such verification in its files, as required by Colorado insurance law.
23. Issue F1: Failure, in some instances, to charge rates in accordance with the rates on file with the Commissioner. The examiners found this to be a repeat of prior issue B in the findings of the market conduct examination report for calendar year 2002. The violation resulted in Recommendation #10 of Final Agency Order O-04-183. The 2002 examination report and Final Agency Order O-04-183 are incorporated herein by reference. This failure constituted a violation of § 10-11-118, C.R.S., and Colorado Insurance Regulation 3-5-1. The Commissioner is not including a violation of § 10-3-1104(1)(f)(II), C.R.S. No later than thirty (30) days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has revised its process to exercise reasonable efforts to ensure that all title policy and endorsement charges are issued with premium determinations that are consistent with filed rates, as required by Colorado insurance law.
24. Issue G1: Failure, in some instances, to conduct, preserve and retain in title files a reasonable examination of the title. The Respondent challenged the interpretation of its responsibilities and that there was any violation. This failure constituted violations of § 10-11-106, C.R.S. and Colorado Insurance Regulations 1-1-7 and 3-5-1. No later than thirty (30) days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has exercised reasonable efforts to ensure that a reasonable title examination has been conducted, preserved and maintained in Respondent's or its agents' files, as required by Colorado insurance law.
25. Issue G2: Failure, in some instances, to obtain a certificate of taxes due or written instructions eliminating the requirement from the proposed insured. The

Respondent challenged the interpretation of its responsibilities and that there was any violation. This failure constituted a violation of §§ 10-11-122, C.R.S., and Colorado Insurance Regulations 1-1-7 and 3-5-1. No later than thirty (30) days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has exercised reasonable efforts to ensure that a certificate of taxes due, or instructions eliminating the requirement, is obtained and retained by Respondent or its agents prior to issuance of the title policy, as required by Colorado insurance law.

26. Issue G3: Failure, in some instances, to provide evidence of the special taxing district disclosure. The Respondent challenged the interpretation of its responsibilities and that there was any violation. This failure constituted a violation of § 10-11-122, C.R.S., and Colorado Insurance Regulation 3-5-1. No later than thirty (30) days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has exercised reasonable efforts to ensure that Respondent or its agents provide the special taxing district disclosure with each title commitment issued for the sale of residential real property, as required by Colorado insurance law.
27. Issue G4: Failure, in some instances, to provide evidence that the Gap disclosure had been provided. The Respondent challenged the interpretation of its responsibilities and that there was any violation. This failure constituted a violation of Colorado Insurance Regulation 3-5-1. No later than thirty (30) days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has exercised reasonable efforts to ensure that Respondent or its agents provide the Gap disclosure with each title commitment issued for an owner's title insurance commitment, as required by Colorado insurance law.
28. Issue G5: Failure, in some instances, to provide evidence that the severed mineral estate disclosure had been provided. The Respondent challenged the interpretation of its responsibilities and that there was any violation. This failure constituted a violation of § 10-11-123, C.R.S., and Colorado Insurance Regulation 3-5-1. No later than thirty (30) days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has exercised reasonable efforts to ensure that Respondent or its agents provide the severed mineral estate disclosure with each title commitment issued for an owner's title insurance policy, when it is determined that a mineral estate has been severed from the surface estate, as required by Colorado insurance law.
29. Issue G6: Failure, in some instances, to provide evidence that the mechanic's lien disclosure had been provided. The Respondent challenged the interpretation of its responsibilities and that there was any violation. This failure constituted a violation of Colorado Insurance Regulation 3-5-1. No later than

thirty (30) days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has exercised reasonable efforts to ensure that Respondent or its agents provide the mechanic's lien disclosure with each title commitment issued for an owner's title insurance policy, as required by Colorado insurance law.

30. Issue G7: Failure, in some instances, to provide evidence that the privacy disclosure had been provided. The Respondent challenged the interpretation of its responsibilities and that there was any violation. This failure constitutes a violation of Colorado Insurance Regulations 3-5-1 and 6-4-1. No later than thirty (30) days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has exercised reasonable efforts to ensure that Respondent or its agents provide the privacy disclosure as required by Colorado insurance law.
31. Issue G8: Failure, in some instances, to provide evidence of an update of the title commitment, when Respondent or its agent provided closing and settlement services, in conjunction with the issuance of an owner's policy of title insurance. The Respondent challenged the interpretation of its responsibilities and that there was any violation. This failure constituted a violation of Colorado Insurance Regulation 3-5-1. No later than thirty (30) days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has exercised reasonable efforts to provide evidence of an update to the commitment where Respondent or its agents provided closing and settlement services, in conjunction with the issuance of an owner's policy of title insurance, as required by Colorado insurance law.
32. Issue G9: Failure, in some instances, to provide evidence of written instructions, from all necessary parties, when Respondent or its agent provided closing and settlement services. The Respondent challenged the interpretation of its responsibilities and that there was any violation. This failure constituted a violation of Colorado Insurance Regulation 3-5-1. No later than thirty (30) days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has exercised reasonable efforts to ensure evidence of written instructions are received from all necessary parties where Respondent or its agent provides closing and settlement services, as required by Colorado insurance law.
33. Issue G10: Failure, in some instances, to require the agents to remit premiums within the required contractual time period. The Respondent challenged the interpretation of its responsibilities and that there was any violation. This failure constituted a violation of § 10-2-704, C.R.S., and Colorado Insurance Regulation 3-5-1. No later than thirty (30) days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the

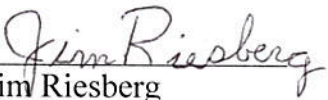
Division that it has exercised reasonable efforts to ensure timely remittance of premium, as required by Colorado insurance law.

34. Issue G11: Failure, in some instances, to report to the Commissioner any remittance that exceeded forty-five (45) days beyond the contractual due date. This failure constituted a violation of § 10-2-704, C.R.S., and Colorado Insurance Regulation 3-5-1. No later than thirty (30) days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has exercised reasonable efforts to ensure untimely remittance of premium is timely reported to the Commissioner as required by Colorado insurance law.
35. Issue G12: Failure, in some instances, to maintain and provide records required for a market conduct examination. This failure constituted a violation of Colorado Insurance Regulation 1-1-7. No later than thirty (30) days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has exercised reasonable efforts to maintain appropriate policy file records, as required by Colorado insurance law.
36. Issue J1: Failure, in some instances, to include the initial date of receipt, date-stamped by the insurer on documents in claims files as required for a market conduct examination. The Respondent challenged the interpretation of its responsibilities and that there was any violation. This failure constituted a violation of Colorado Insurance Regulation 1-1-7. No later than thirty (30) days from the date of this Amended Final Agency Order, the Respondent shall provide written evidence to the Division that it has implemented procedures to include the initial date of receipt, stamped by the insurer on notice of claim documents in claims files, or to maintain an electronic file system to support and document the receipt date, as required by Colorado insurance law.
37. Issue J2: Failure, in some instances, to maintain and provide claim records required for a market conduct examination. The Respondent challenged the interpretation of its responsibilities and that there was any violation, in part based upon its argument that the Regulation lacks a definition related to "claim records" for title underwriters. Nonetheless, the Commissioner determined that this failure constituted a violation of Colorado Insurance Regulation 1-1-7. No later than thirty (30) days from the date of this Amended Final Agency Order, the Respondent shall confer with the Division as to what constitutes appropriate claims records and, to the extent necessary thereafter, to provide written evidence to the Division that it has implemented reasonable procedures to maintain claims records, as required by Colorado insurance law.
38. The issues and violations described in paragraphs 15 through 37 above are grounds for penalties to be levied pursuant to § 10-1-205(3)(d), C.R.S. The Respondent shall pay a civil penalty to the Division in the amount of One

hundred Seventy thousand and no/100 dollars (\$170,000.00) for the cited violations of Colorado law. The \$170,000.00 penalty shall be assessed a surcharge of 10% of the penalty amount up to a maximum of \$7,500.00, pursuant to 24-34-108, C.R.S., for a total balance due of One hundred Seventy-Seven thousand Five Hundred and no/100 dollars (\$177,500.00). This penalty and surcharge shall be due to the Division no later than thirty (30) days from the date of this Amended Final Agency Order. This surcharge shall be used to fund the development, implementation and maintenance of a consumer outreach and education program.

39. Pursuant to § 10-1-205(4)(a), C.R.S., within sixty (60) days of the date of this Amended Final Agency Order, the Respondent shall file affidavits executed by each of its directors stating under oath that they have received a copy of the Modified Report, as amended and adopted by, this Amended Final Agency Order.
40. This Amended Final Agency Order shall not prevent the Division from commencing future agency action relating to conduct of the Respondent not specifically addressed in the Report, not resolved according to the terms and conditions in this Amended Final Agency Order, or occurring before or after the examination period. Failure by the Respondent to comply with the terms of this Amended Final Agency Order may result in additional actions, penalties and sanctions, as provided for by law.
41. The Respondent has agreed in conjunction with the Commissioner and the Division to dismiss the Litigation. The Respondent retains and preserves all rights to challenge any future form or type of future civil penalties or sanctions proposed by or ordered by, the Commissioner or the Division, related to or arising out of this MCE, the Amended FAO, or any issues raised in any future examination by the Commissioner or the Division.
42. Copies of the Report and this Amended Final Agency Order will be made available to the public no earlier than thirty (30) days after the date of this Amended Final Agency Order, subject to the requirements of § 10-1-205, C.R.S.
43. Pursuant to § 10-1-205(4)(a), C.R.S., this Amended Final Agency Order shall be considered a final agency decision. Respondent waives any right to review such final agency decision in the District Court in and for the City and County of Denver as permitted under the "State Administrative Procedure Act," Article 4 of Title 24, C.R.S.
44. Pursuant to § 10-1-205(4)(e), C.R.S., the civil penalty assessed in this Amended Final Agency Order may be appealed directly to the Colorado Court of Appeals within the applicable time frames of the Colorado Appellate Rules. Respondent waives any right to any such appeal regarding the civil penalty imposed herein.

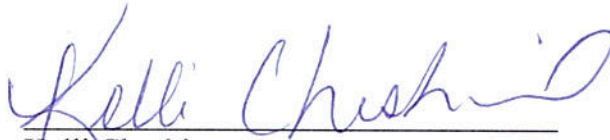
**WHEREFORE:** It is hereby ordered that the findings of facts and conclusions of law contained in the Modified Report dated July 8, 2011, subsequently adopted by the Commissioner with modifications on August 26, 2011 and as further modified and amended by this Amended Final Agency Order, are hereby filed and made an official record of this office, and the within Amended Final Agency Order incorporating the adopted Modified Report is hereby approved and effective this 14<sup>th</sup> day of March, 2013.

  
Jim Riesberg  
Commissioner of Insurance

**CERTIFICATE OF MAILING**

I hereby certify that on the 15<sup>th</sup> day of March, 2013, I caused to be deposited the **AMENDED FINAL AGENCY ORDER NO. O-13-105 IN THE MATTER OF THE MARKET CONDUCT EXAMINATION OF FIRST AMERICAN TITLE INSURANCE COMPANY**, in the United States Mail via certified mailing with postage affixed and addressed to:

Mr. Dennis Gilmore, President  
First American Title Insurance Company  
1 First American Way  
Santa Ana, CA 92707



Kelli Cheshire  
Office Manager  
Division of Insurance